

Workshop for Preliminary Draft Response Action Regulations

The Department of Toxic Substances Control (DTSC) is conducting three public workshops to solicit input and information for use in the development of draft regulations for response actions. The objectives of these workshops are as follows:

- To receive comment on preliminary draft regulatory language
- To provide an opportunity for interested parties to discuss preliminary draft language, provide suggestions for changes and discuss impacts

DTSC has scheduled these workshops prior to finalizing draft regulations for the rulemaking public notice to provide a greater opportunity for public comment and input regarding the draft regulations. After the workshops, DTSC will review and incorporate the public comments received. At that time DTSC will determine whether additional workshops will be needed to present any changes that may have been made or whether the rulemaking process will be initiated with a public notice of the final draft regulations.

Currently, DTSC has developed preliminary draft language for the Response Action Regulations that establishes a single process for most site cleanups conducted by DTSC and the Unified Program Agencies (UPAs). As written, the preliminary draft regulations will apply both to response actions conducted under the state's site mitigation authority (Health and Safety Code, Division 20, Chapter 6.8) and those conducted under the state's corrective action authority (Health and Safety Code, Division 20, Chapter 6.5). The proposed requirements for the majority of these cleanups will be consistent with the federal cleanup requirements found in Subpart E of the National Contingency Plan (NCP).

DTSC's preliminary draft of the Response Action Regulations, which is further outlined below, will serve as a focus for workshop discussion. This preliminary draft may be found on DTSC's website, located at www.dtsc.ca.gov, and copies will be available at the workshop. If possible, participants are encouraged to review the draft language before attending a workshop.

Preliminary Draft Response Action Regulations

State and federal laws establish procedures and standards for ensuring that actions are taken to address releases of hazardous waste and constituents, hazardous substances and hazardous materials that pose a threat to public health or the environment. In California, DTSC may take or require corrective action at hazardous waste facilities in accordance with statutory authority provided in chapter 6.5, division 20 of the Health and Safety Code (hereafter Chapter 6.5). In addition, DTSC may take or require site mitigation at other contaminated sites in accordance with statutory authority provided in chapter 6.8, division 20 of the Health and Safety Code (hereafter Chapter 6.8). Because the statutory authority to take or require corrective action set forth in Chapter 6.5 does not specify a process outlining procedures and standards that must be followed, at this time corrective action is conducted primarily in accordance with federal guidance, which was originally based on the federal site mitigation program. The

statutory authority to implement or require site mitigation cleanup at sites set forth in Chapter 6.8 requires that the process must be consistent with both the federal regulations specified in the National Contingency Plan (NCP) and requirements in Chapter 6.8.

The preliminary draft language affects Title 22, Division 4.5 of the California Code of Regulations by establishing regulatory requirements applicable to the corrective action provisions of Chapter 6.5, and the site mitigation provisions of Chapter 6.8. The preliminary draft establishes a single approach and set of terminology for the majority of response actions in the state, thereby improving consistency between the regulatory requirements applicable to the two programs. This process, which is consistent with Subpart E of the NCP and the requirements specified in Chapters 6.5 and 6.8 and any existing associated regulations, includes provisions for both remedial actions and removal actions. The preliminary draft also specifies early public participation in the process and groundwater monitoring reports at sites with groundwater contamination.

Alternative Process

With the wide variation in the types, size and complexity of facilities and contaminated sites in the state, however, DTSC recognizes the need for an alternative process for certain smaller, less complex and less time-consuming sites. To meet this need, the draft language includes a process for a special category of removal actions that must begin within a six-month timeframe. In addition, the preliminary draft includes an alternative, expedited, process for less complex corrective action sites.

UPA Qualifications

Statutory provisions in Health and Safety Code section 25404.1(a)(3)(C) require DTSC to adopt regulations establishing criteria and procedures for determining whether an UPA is qualified to implement environmental assessments and corrective action requirements for hazardous waste generators and facilities under the UPA's jurisdiction. Facilities that may be regulated by an UPA include most on-site facilities, such as those under permit-by-rule, with conditional authorization or a conditional exemption. The preliminary draft language provides a tiered approach, allowing UPAs to select one of two levels of qualifications based on the types of facilities they will need to address. Currently, an UPA may oversee cleanup of a facility to a limited degree when the remediation is necessary to address imminent and substantial endangerment. To implement this provision, an UPA may issue an enforcement order pursuant to Health and Safety Code section 25187(a) only when the order must take effect immediately in order to protect human health or safety or the environment. The preliminary draft expands this authority, allowing UPAs broader authority to oversee corrective action at facilities regulated by an UPA.

Permanent Disposal in an AOC

Current law allows movement and consolidation of hazardous wastes within a contiguous area of contamination (AOC) at the discretion of the generator or facility without requiring authorization. In some instances, however, generators or facilities have elected to leave wastes within an AOC indefinitely, ultimately resulting in effective

permanent disposal without either authorization or a determination that this activity is protective of public health and the environment. The preliminary draft language requires either an authorizing permit, or incorporating the AOC into a response action in accordance with these draft regulations when permanent disposal in an AOC occurs.

The workshops are scheduled for:

DATE: March 3, 2004
TIME: 9:00 a.m. to 2:00 p.m.
LOCATION: Cal/EPA Headquarters Building
Central Valley Auditorium
1001 I Street, 2nd Floor
Sacramento, CA 95812

Note: Visitors must check-in with security upon entering the Cal/EPA Headquarters Building

DATE: March 10, 2004
TIME: 9:00 a.m. to 2:00 p.m.
LOCATION: South Coast AQMD Building
21865 E. Copley Dr., Auditorium
Diamond Bar, CA 91765

DATE: March 23, 2004
TIME: 9:00 a.m. to 2:00 p.m.
LOCATION: Santa Clara County, Building 2
1st Floor Auditorium
1555 Berger Dr.
San Jose, CA 95112

All interested parties are invited to participate in one of these public workshops. Please confirm your interest in attending one of the workshops by sending an e-mail notice indicating which workshop you will be attending to Heather Lerma at HLerma@dtsc.ca.gov or by calling (916) 323-9219.

If you have any further questions about the workshops, or wish to submit written comments regarding the preliminary draft regulatory language or the development of these regulations, please contact Ms. Nancy Ostrom at (916) 322-3385 or NOstrom@dtsc.ca.gov.